

BORA LASKIN LAW LIBRARY

A standard linear barcode is located here, used for library identification.

3 1761 10084821 7

MATERIALS ON
INDUSTRIAL PROPERTY

Copyright © 1970, 1975, 1978, 1979, 1981
by W.L. Hayhurst

Fifth Edition
1981



LAW LIBRARY

JAN 23 1980

FACULTY OF LAW
UNIVERSITY OF TORONTO

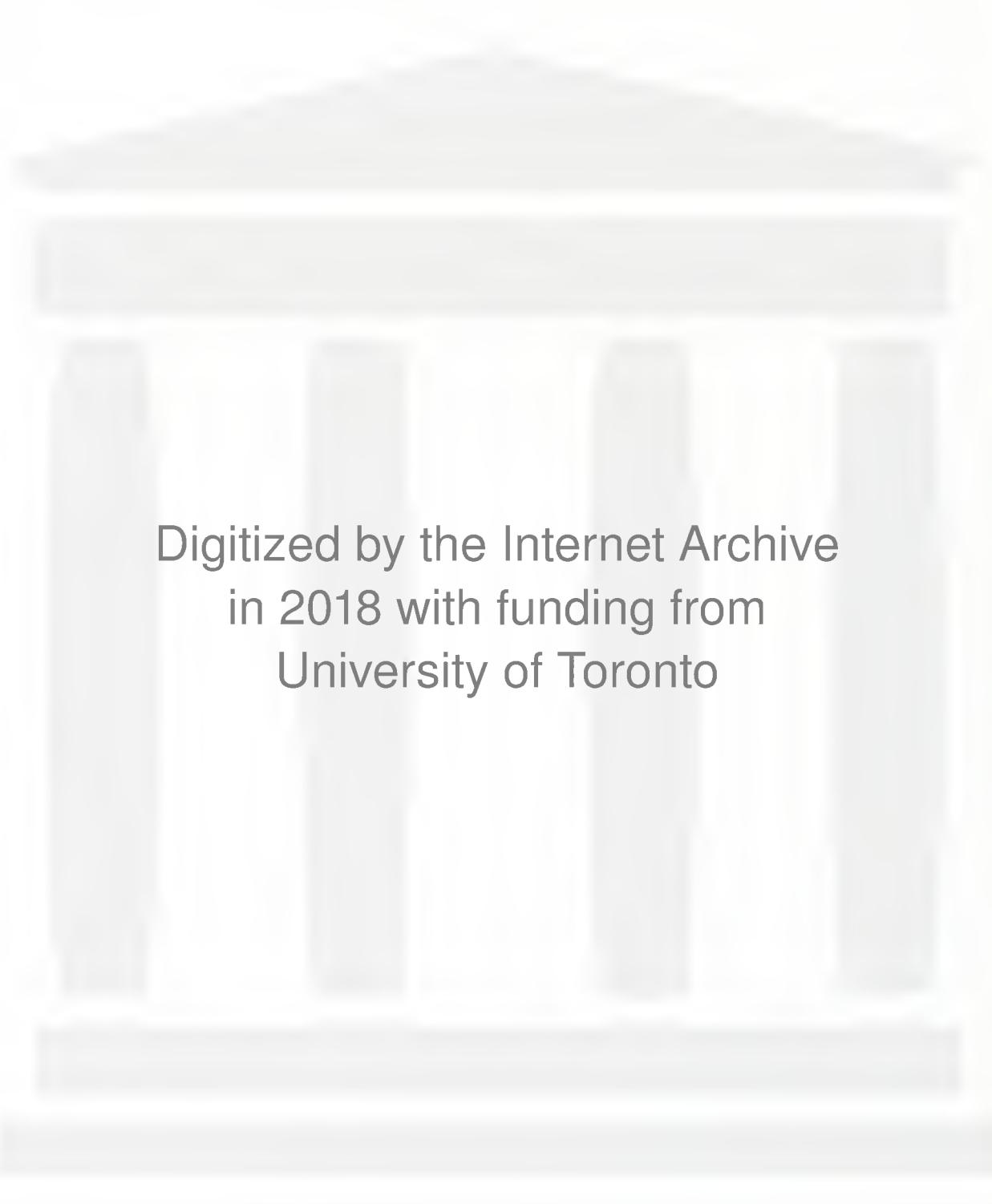
FACULTY OF LAW
UNIVERSITY OF TORONTO

MATERIALS ON
INDUSTRIAL PROPERTY

Copyright (C) 1970, 1975, 1978, 1979, 1981
by W.L. Hayhurst

Fifth Edition
1981

TORONTO
Faculty of Law
University of Toronto



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/materialsonindus00hayh_0

~~Faculty of Law - UNIVERSITY OF TORONTO~~

INDUSTRIAL PROPERTY

1981 Syllabus

NOTES:

References: Fox, "Canadian Patent Law and Practice", 4th ed.; Terrell, "Patents", 12th ed. (1971); Blanco White, "Patents for Inventions", 4th ed.; Hayhurst, "Industrial Property", (1979) 11 Oct.

(1) Introduction:

Statute of Monopolies, 21 Jac. I c. 3 s.6, R.S.B.C. 1897
Patent Act, R.S.C. 1970, c. P-4
British United Shoe v. Fussell, (1908), 25 R.P.C. 600

(2) Subject matter:

Lane-Fox v. Kensington, (1892), 9 R.P.C. 413, 416
G.E.C.'s Application, (1943), 60 R.P.C. 1, 4
Burroughs' Application, [1974] R.P.C. 147, 154, 159, 161
Re Walter, (1980), 205 U.S.P.Q. 397
Diamond v. Diehr, (), U.S.P.Q.
Anonymous Application, 106 Canadian Patent Office Record, 1978, p. xviii
Re Bergy, (1979), 201 U.S.P.Q. 352
Diamond v. Chakrabarty, (1980), 206 U.S.P.Q. 193
Tennessee Eastman v. Commissioner, [1974] S.C.R. 111
Organon's Application, (1974), 15 C.P.R. (2d) 273
Wellcome's Application, [1980] R.P.C. 305
"Utility and Non-Statutory Subject Matter", Canadian Patent Manual of Patent Office Practice, Chapter 12
Ciba-Geigy's Application [1976] F.S.R. 77
Organon's Application, [1970] R.P.C. 574
Eli Lilly's Application, [1975] R.P.C. 438

(3) The patent specification:

Natural Colour v. Bioschemes, (1915), 32 R.P.C. 256, 263
American Cyanamid v. Ethicon, [1979] R.P.C. 215, 245, 246
Minerals Separation v. Noranda Mines, (1952), 69 R.P.C. 21
B.V.D. v. Canadian Celanese, [1937] S.C.R. 221, 230, 241
Leithiser v. Pengo [1974] 2 F.C. 954
Hoechst v. Gilbert, [1966] S.C.R. 189

(4) Novelty:

A103 35 U.S. Code, s. 104
A104 Electric and Musical Industries v. Preston, (1931) 41-43
Bristol-Myers' Application [1975] R.P.C. 127
Gibney v. Ford, (1968), 52 C.P.R. 140

(5) Obviousness:

Hoechst v. Commissioner, [1964] S.C.R. 49, 56
A108 35 U.S. Code, s. 103
Graham v. John Deere, (1965), 383 U.S. 1
A109 Technograph v. Mills, [1969] R.P.C. 395, 404-5, 407-8; [1972]
P.P.C. 346, 355
A113 Xerox v. IBM, (1977), 33 C.P.R. (2d) 24, 32-37, 61-62
A121 Rado v. Tye, [1969] F.S.R. 563, 565-6
A123 General Tire v. Firestone, [1971] R.P.C. 173, 232, 245-6; [1972]
R.P.C. 457, 482-483, 485, 499-500
I.C.I.'s Application. [1977] F.S.R. 434
A130 Olin Mathieson v. Biorex, [1970] R.P.C. 157, 187-8
Re Antle, (1971), 170 U.S.P.Q. 285
Dow's Patent, [1975] R.P.C. 165, 169
A132 Wood v. Gowshall, (1937), 54 R.P.C. 37, 40

(6) Utility:

Societe Rhone Poulenc v. Gilbert, (1967), 35 Fox Pat. C. 174;
[1968] S.C.R. 950
Monsanto v. Commissioner, [1979] 2 S.C.R. 1108
Burton Parsons v. Hewlett-Packard, [1976] 1 S.C.R. 555
Norton & Gregory v. Jacobs, (1937), 54 R.P.C. 271
Metalliflex v. Rodi & Wienenberger, [1961] S.C.R. 117, 121-122

(7) Infringement:

A133 Henriksen v. Tallon, [1965] R.P.C. 434, 443, 445
"McPhar v. Sharpe: A Post Mortem", (1967), 21 Bulletin of the
Patent and Trademark Institute of Canada 66 (on reserve)
Catnic v. Hill [1979] F.S.R. 619
A138 Union Carbide v. Trans-Canada Feeds [1966] Ex. C.R. 884, 888-890
A141 Wilderman v. Berk, (1925), 42 R.P.C. 79, 88
Beecham v. Bristol, [1977] F.S.R. 215
Morton-Norwich v. Intercen, [1976] F.S.R. 513, 521-526
A142 35 U.S. Code, s. 271
Copeland-Chatterson v. Hatton, (1906), 10 Ex. C.R. 224
A143 Slater v. Payer, (1968), 38 Fox Pat. C. 139, 157, 163-4
A146 Procter & Gamble v. Bristol-Myers, (1979), 39 C.P.R. (2d) 145,
165-170, affd. 42 C.P.R. (2d) 33
Solar Thomson v. Barton, [1977] R.P.C. 537

(8) The Paris Convention

COPYRIGHT

References: Fox, "The Canadian Law of Copyright and Industrial Designs", 2nd ed. (1967)
Copinger & Skone James, "Copyright", 11th ed. (1971)
Lahore, Intellectual Property in Australia (1971)
Nimmer on Copyright (1979)

(1) Introduction:

The Berne and Universal Copyright Conventions
Canadian Admiral v. Rediffusion, [1954] Ex. C.R. 187
Copyright Act, R.S.C. 1970, c. C-30
Performing Right Society v. Rangers, [1975] R.P.C. 676
Gramophone v. Cawardine, [1934] Ch. 450
Vigneux v. Canadian Performing Right, [1943] S.C.R. 100
[1945] A.C. 108
Gnass v. Cite d'Alma (P.Q.C.A., June 30, 1977)

(2) Authorship and ownership:

Re Dickens, [1935] 1 Ch. 267
Hay v. Sloan, (1958), 12 D.L.R. (2d) 397
Netupsky v. Dominion Bridge, [1972] S.C.R. 368
Meikle v. Maufe, [1941] 3 All E.R. 144
Jefferys v. Boosey, (1854), 4 H.L.C. 815, 993
Ludlow v. Canint, [1967] 2 Ex. C.R. 109
Wood v. Boosey, [1867] L.R. 2 Q.B. 340
Hartnett v. Pinkett, (1953), 103 L.J. 204
Merchant Adventurers v. Grew, [1973] R.P.C. 1, 10

(3) Subject matter:

B50 Francis, Day & Hunter v. Twentieth Century Fox, [1939] 358-361
B54 Ladbrooke v. Hill, [1964] 1 All E.R. 465, 489, 470-478
British Northrup v. Texteam, [1974] R.P.C. 57, 68
Warwick v. Eisinger, [1969] Ch. 508
Pasichniak v. Dojacek, [1938] 2 D.L.R. 649
CAPAC v. CTV, [1968] S.C.R. 676

(4) Copyright Works, and Ideas:

B59 Cuisenaire v. South West, [1969] S.C.R. 208
Donoghue v. Allied, [1938] 1 Ch. 106, 109-110
B61 Moreau v. St. Vincent, [1950] Ex. C.R. 198, 204-205
B64 Football League v. Littlewoods, [1959] 2 All E.R. 54

(5) Originality:

B68 Copinger & Skone James, 11th ed., ss. 124, 125, 130
Bauman v. Fussell [1978] R.P.C. 485
Time v. Geis, (1968), 293 F. Supp. 1
Batlin v. Snyder, (1976), 189 U.S.P.Q. 753
B77 Walter v. Lane, [1900] A.C. 539, 548-9, 556
Roberton v. Lewis, [1976] R.P.C. 169, 175
Lipman v. Massachusetts, (1973), 475 F. 2d 561
Macmillan v. Cooper, (1923), 40 T.L.R. 186, 188

(6) Scope of Protection:

Warner Bros. v. CESM, (1971), 65 C.P.R. 215
L.B. (Plastics) v. Swish, [1979] F.S.R. 145, 149
B81 Deeks v. Wells, [1931] 4 D.L.R. 533, 547; [1933] 1 D.L.R. 353,
356-357
Francis, Day & Hunter v. Bron, [1963] 2 All E.R. 16
B85 Hanfstaengl v. Baines, [1895] A.C. 20, 30-31
B87 Hawkes v. Paramount, [1934] 1 Ch. 593
Cartwright v. Wharton, (1912), 25 O.L.R. 357, 362-363
Colton v. Progress, [1895] 2 Ch. D. 29
Hoehling v. Universal, (1980), 205 U.S.P.Q. 681
Ravenscroft v. Herbert [1980] R.P.C. 193
B89 Harman v. Osborne, [1967] 2 All E.R. 324, 328
B90 Nichols v. Universal Pictures, (1930), 45 F 2d. 119, 121
B91 Kantel v. Grant, [1933] Ex. C.R. 84, 87, 94-96
Williams & Wilkins v. U.S., (1974), 487 F. 2d 1345; (1975),
95 S. Ct. 1344
Moorhouse v. University of New South Wales, [1976] R.P.C. 151
Universal City Studios v. Sony (1979) 203 U.S.P.Q. 656
A & M Records v. Audio Magnetics, [1979] F.S.R. 1
Hubbard v. Vosper, [1972] 1 All E.R. 1023, 1026-1028, 1031

INDUSTRIAL DESIGNS:

References: Fox, "Canadian Law of Copyright", 2nd ed. (1976)
pp. 650-691
Russell-Clarke, "Copyright in Industrial Design", (1974)

(1) Subject matter:

35 U.S. Code, s. 171
Industrial Design Act, R.S.C. 1970, c. I-8
Hensher v. Restawile, [1975] R.P.C. 31, 60, 62
Re Bayer's Design, (1907), 24 R.P.C. 65, 76-77
Stenor v. Whitesides, (1948), 65 R.P.C. 1, 9
Amp v. Otilux, [1972] R.P.C. 103, 197-110, 113
Cimon v. Bench Made, [1965] 1 Ex. C.R. 811, 828-833
Industrial Designs Rules, P.C. 1954-1853, s. 11
Ware v. Anglo-Italian (No. 1), [1922] Macq. C.C. 336
King Features v. Kleeman, [1941] A.C. 417, 427
Mazer v. Stein, (1954), 347 U.S. 201
Kieselstein-Cord v. Accessories by Pearl, (1980) 200 F. Supp. 2d 100, 101
revised. (1981) U.S.P.Q.
Frankel v. Tegman, (1973), 367 F. Supp. 1051
Re Clarke's Design, (1896), 13 R.P.C. 351, 358, 361

(2) Novelty and Originality:

Saunders v. Weil, (1893), 10 R.P.C. 29, 33
Dean's Rag Book v. Pomerantz, (1930), 47 R.P.C. 485, 491
Clatworthy v. Dale, [1929] S.C.R. 429, 434-5
Rosedale v. Airfix, [1957] R.P.C. 239, 244
Kilvington v. Goldberg, (1957), 16 Fox Pat. C. 164
Valor v. Main Gas, [1973] R.P.C. 871, 877

(3) Registration:

Melnor v. Lido, [1971] S.C.R. 72

(4) Infringement:

Toy Loader Application, (1978), 36 C.P.R. (2d) 234
Walker v. Scott, (1892), 9 R.P.C. 482, 485

4. TRADE SECRETS:

References: Turner, "The Law of Trade Secrets" (1962)
Fox, "The Canadian Law of Trade Marks and Unfair Competition", 3rd ed. (1972), Chapter 13

(1) Establishment of a contractual or confidential relationship:

D1 Triplex v. Scorah, (1938), 55 R.P.C. 21, 28
Canadian Aero Services v. O'Malley, [1974] S.C.R. 592
Comment 28 C.P.R. (2d) 68
United Sterling v. Felton, [1974] R.P.C. 162
Hivac v. Park Royal, [1946] Ch. 169
Cranleigh v. Bryant, [1966] R.P.C. 81
D2 Saltman v. Campbell, (1948), 65 R.P.C. 203, 211-6
Shellmar v. Allen-Qualley, (1929), 36 F 2d. 623
D8 Coco v. Clark, [1969] R.P.C. 41, 46-50
Kewanee v. Bicron, (1974), 416 U.S. 470

(2) The nature of the information sought to be protected:

Thomas Marshall v. Guinle, [1979] F.S.R. 208
Morris v. Gilman, (1943), 60 R.P.C. 20, 25
Interfirm Comparison v. Law Society, [1977] R.P.C. 137
Exchange Telegraph v. Central News, [1897] 2 Ch. 48
DuPont v. Christopher, (1970), 431 F 2d. 1012
Nicrotherm v. Percy, [1957] R.P.C. 207
Church of Scientology v. Kaufman, [1973] R.P.C. 635, 649, 658

(3) Liability of persons who have not dealt with the plaintiff:

Lord Ashburton v. Pape, [1913] 2 Ch. 469
British Industrial Plastics v. Ferguson, (1941), 58 R.P.C. 1
Colgate v. Carter, (1956), 230 F 2d. 855, 864
D14 Printers v. Holloway, [1965] R.P.C. 239, 252-253
Franklin v. Giddins, [1978] Qd. R. 72
D16 Restatement of Torts, s. 758
D17 Conmar v. Universal, (1949), 172 F 2d. 150, 156
D18 Stevenson v. McDonald, (1951), 68 R.P.C. 190, 195; (1952), 69 R.P.C. 10, 16
Abernethy v. Hutchison, (1825), 1 H. & Tw. 28
De Acosta v. Brown, (1944), 146 F. 2d. 408

(4) Duration of obligations:

Torrington v. Smith, [1966] R.P.C. 285
Aronson v. Quick Point, (1979), 201 U.S.P.Q. 1
Mustad v. Dosen, [1963] R.P.C. 41
D20 Seeger v. Copydex, [1967] R.P.C. 349, 367-8
Reliable Toy v. Collins, (1950), 13 C.P.R. 53
Bee Chemical v. Plastic Paint (1980) 47 C.P.R. (2d) 133
Winston v. M.M.M., (1965), 350 F. 2d 134
Underwater Storage v. U.S. Rubber, (1966), 371 F. 2d. 950
Dunford v. Johnson, [1978] F.S.R. 145
Woodword v. Hutchins, [1977] 2 All E.R. 751

RESTRAINTS ON COMPETITION:

(1) Sales sub modo:

E Badische v. Isler, (1906), 23 R.P.C. 173, 180
1 Incandescent v. Cantelo, (1895), 12 R.P.C. 262
3 National Phonograph v. Menck, (1911), 28 R.P.C.

(2) U.S. developments:

Hazeltine v. Zenith, (1969), 395 U.S. 100
Pfizer v. F.T.C., (1968), 401 F. 2d 574
Motion Picture Patents v. Universal, (1917), 243 U.S.
Morton Salt v. Suppiger, (1942), 314 U.S. 488

(3) Enforceability of restraints:

Darcy v. Allein, (1602), 77 E.R. 1260, 1263
Copeland-Chatterson v. Hatton, (1906), 10 Ex C.R.
37 S.C.R. 651
Mouchel v. Cubitt, (1907), 24 R.P.C. 194
Tool Metal v. Tungsten, (1955), 72 R.P.C. 209, 214

(4) The Combines Investigation Act, R.S.C. 1970, c. C-13

Roccois v. Quebec Ready Mix, [1980] 1 F.C. 184
Seiko Time v. Consumers Distributing, (1981) 1 C.P.R. 1
Henuset v. Syncrude, (1981), D.L.R. (3d)
Stephens v. Gulf Oil, (1976), 11 O.R. (2d) 129
Weidman v. Schragge, (1912), 46 S.C.R. 1
Eli Lilly v. Marzone, (1977), 29 C.P.R. (2d) 255

(5) Defences to infringement actions:

Rodi v. Watchstraps, (1958), 30 C.P.R. 8, 15
RBM v. Philips, (1973), 9 C.P.R. (2d) 46; 10 C.P.R. (2d) 111
Amoco v. Texaco, [1976] 1 F.C. 258
ICI v. Berk, [1980] F.S.R.

(6) The public interest:

Belloff v. Pressdram, [1973] R.P.C. 765
City of Milwaukee v. Activated Sludge, (1934), 69 F. 2d 111

STATUTORY CURTAILMENTS:

Hoffman-La Roche v. Delmar, [1965] S.C.R. 575
Bristol-Myers v. Beecham, (1980), 48 C.P.R. (2d) 87
Formea v. Polymer, [1968] S.C.R. 754
Libby-Owens-Ford v. Ford, [1970] S.C.R. 833
Peterson v. Plastiseal, (1973), 8 C.P.R. (2d) 222
C.P.R. (2d) 48, 52
Reeves v. Toronto Quilting, (1979), 43 C.P.R. (2d) 111
E21 Procter & Gamble v. Bristol-Myers, (1979), 42 C.P.R. (2d) 111
Teledyne v. Lido, (1980), 45 C.P.R. (2d) 18, 42-43

